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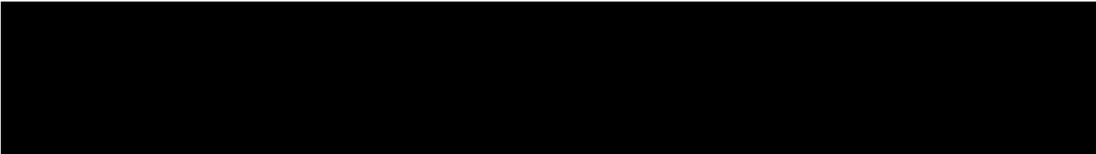
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U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: MAY 29 2007
WAC 06 012 51676

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maura Deadnick

fr Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Christian church of the Assemblies of God denomination. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a music director. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a music director immediately preceding the filing date of the petition.

On appeal, the petitioner submits arguments from counsel and new exhibits.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the “religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.” 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 7, 2005. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of a music director throughout the two years immediately prior to that date.

The petitioner has claimed that the beneficiary worked only for the petitioner throughout the 2003-2005 qualifying period. The petitioner's initial submission included copies of pay stubs, the most recent of which was dated July 31, 2005. That pay stub indicated that the beneficiary's year-to-date gross pay was \$10,500.00.

We note that the pay stubs indicate that the beneficiary's gross pay was \$1,500.00 per month, from which \$307.80 in taxes was withheld each month, leaving net monthly pay of \$1,192.20. The beneficiary's 2003 and 2004 tax returns show that the beneficiary reported this withholding of taxes, and claimed refunds both years based on overpayment. The petitioner also, however, submitted copies of checks from the petitioner to beneficiary, dated at monthly intervals from July 2004 to July 2005. These checks are for \$1,500.00 each, indicating that the petitioner did not, in fact, withhold any taxes; the petitioner paid the beneficiary the full gross salary. Thus, the pay stubs do not match the checks. The evidence also suggests not only that the beneficiary paid no taxes on his salary, but also that he claimed tax refunds based on taxes that were never actually withheld.

On March 23, 2006, the director instructed the petitioner to submit additional evidence of the beneficiary's past employment, including Internal Revenue Service (IRS) Form W-2 Wage and Tax Statements. In response, [REDACTED] of the petitioning church stated that the beneficiary "was hired as an Assistant to the Pastor to assist me as the Pastor of our Church from 2001 to 2005." Because the pastor's letter dates from 2006, the assertion that the petitioner employed the beneficiary "from 2001 to 2005" indicates that the beneficiary's employment ceased in 2005. Furthermore, by referring back to 2001 rather than 2003, it is clear that the pastor was not simply referring specifically to the two-year qualifying period.

The petitioner did not submit the beneficiary's Forms W-2 for 2003 or 2004. The petitioner did, however, submit a copy of the beneficiary's 2005 income tax return and the accompanying Form W-2 Wage and Tax Statement. These documents show that the beneficiary reported a total of \$10,500 in gross income in 2005, all of it from the petitioning church. (The Form W-2, like the pay stubs, indicates that taxes were withheld, although the paychecks show no such withholding.) The pay stubs submitted previously demonstrate that the petitioner had paid the beneficiary \$10,500 between January and July 2005. Therefore, the evidence indicates that the petitioner did not pay the beneficiary after July 2005. This is consistent with the pastor's 2006 assertion that the petitioner employed the beneficiary "from 2001 to 2005."

Regarding the beneficiary's means of support, [REDACTED] stated:

Beneficiary . . . has served our Church as a volunteer since he became a member of our Church. Except for the time he had served our Church as a paid staff [member], namely Assistant to the Pastor, pursuant to his R-1 status, he has volunteered his time and talent for our Church. [The beneficiary's] family and friends, especially our Church members, have provided food and living expenses for him. Among them are his mother, sister, and [REDACTED] . . . In addition, [the beneficiary] had worked as an Assistant to the Pastor for our Church for almost five years and he was paid salary to support himself.

Here, again, the pastor consistently referred to the beneficiary's employment in the past tense.

The petitioner submitted a letter from [REDACTED] who described himself as “a current U.S. government civil servant, a GG-13 in the Department of the Air Force.” [REDACTED] stated:

I’ve known [the beneficiary] since late 1996 when we met through a mutual acquaintance. . . . I volunteered my free time to help him improve his English language and American culture skills. . . .

In more recent years I’ve . . . become an extended part of [the beneficiary’s] family, become a regular member of his church . . . and a welcomed member of a portion of the Korean-American community in Honolulu. . . .

I’ve observed with amazement his patience with adults and children alike while volunteering his time to teach basic art and drawing skills, music fundamentals, piano and guitar lessons, and bible study classes. . . .

In the more recent years [the beneficiary] and his family have been impacted by limited funds in an increasingly expensive Hawaii economy. . . . I know that as [the beneficiary] has sought to complete his college education in Hawaii that his financial burdens have increased exponentially. I am aware that his family, his church and various church members provide some support when and where they can. Because I believe [the beneficiary to be] deserving, I have become a contributor to that support. He never asks for support; I have offered it freely in the form of time, shared education, and near-monthly monetary contributions. My contributions aren’t necessary for [the beneficiary’s] survival; rather they are the little something extra to help lessen some of life’s stresses for him, his family and his community.

The director denied the petition on July 7, 2006, stating that the tax documents indicate “that the beneficiary was not working for the petitioner since August 1, 2005 to the end of the year,” and therefore the petitioner had not shown that the beneficiary worked continuously for two years immediately prior to the petition’s October 2005 filing date.

On appeal, counsel states:

We submit herewith evidence to show that [the beneficiary] has worked as Music Director for the Church during the period at issue, August 1 to October 7, 2006 [sic]. Attached is a letter from the [REDACTED] the pastor for the Petitioner Church. During the period at issue from August 1 to October 7, 2006 [sic], the Church members helped the Petitioner by paying Beneficiary[’s] salary. For instance, [REDACTED], a member of the Petitioner Church has paid the following as [the beneficiary’s] salary:

Date	Amount
8/4/2005	\$1,000.00
9/3/2005	\$800.00

10/1/2005	\$600.00
10/7/2006	\$500.00

[The beneficiary's] salary was \$1,500 per month, and to cover for the shortage, some church members provided [the beneficiary's] food, gas, other essential goods, and even moral support. Attached are copies of the cancelled checks showing the payments from [REDACTED] a list of members supporting [the beneficiary], and a letter from [REDACTED], a fellow member of the Petitioner church.

[REDACTED] states that the beneficiary "served as Music Director for our church during the months of August through October 2005, and our church members including [REDACTED] donated their money to pay for [the beneficiary's] salary during [that] period." This assertion lacks credibility for a number of reasons. The petitioner submits copies of checks from [REDACTED] payable to the beneficiary, in the amounts listed by counsel. The check described by counsel as being dated "10/7/2006" is actually dated 2005. [REDACTED] had previously stated that he gave money to the beneficiary from time to time, but he never claimed that this money was the beneficiary's "salary," or that the payments were in any way contingent on the beneficiary's performance of work for the petitioning church. Rather, [REDACTED] made it clear that his relationship with the beneficiary predates [REDACTED]'s membership in the petitioning church, and his financial support of the beneficiary derives from this friendship rather than from church work. [REDACTED] stated that the beneficiary "volunteer[ed] his time to teach . . . bible study classes," thus specifically referring to such activity as volunteer work rather than paid employment. There is, therefore, no credible evidence that [REDACTED]'s checks represent partial payment of the beneficiary's salary.

Furthermore, the pastor's new letter contradicts the pastor's own prior statements, such as this assertion from the pastor's response to the March 23, 2006 request for evidence: "Beneficiary . . . has served our Church as a volunteer since he became a member of our Church. Except for the time he had served our Church as a paid staff [member], namely Assistant to the Pastor, pursuant to his R-1 status, he has volunteered his time and talent for our Church." This contradicts the new claim that the beneficiary has received a "salary" all along.

Also, on the Form I-360 petition itself, the petitioner indicated that the beneficiary's R-1 nonimmigrant status was valid through June 27, 2006. This would have allowed the beneficiary to continue working for the petitioner on a salaried basis well past the October 2005 filing date. The pastor does not explain, on appeal, why these salary payments ceased after July 2005, after which time "our church members including Mr. Smith donated their money to pay for [the beneficiary's] salary." The lack of an explanation is particularly significant in light of the pastor's prior indication that the beneficiary was a "volunteer" except during a period of employment from 2001 to 2005.

Furthermore, the pastor's own prior statements indicate that the beneficiary never received a salary for his work as a music director. Rather, the beneficiary was a volunteer music director who, for a time, also received a salary as "Assistant to the Pastor." The beneficiary's salary payments ended when he ceased to perform his duties as Assistant to the Pastor. There is no concrete evidence that the beneficiary's activities as a volunteer music director ever amounted to anything approaching full-time duties, and the beneficiary's paid

employment experience appears to have been in a position separate and distinct from the position offered to the beneficiary.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 586 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 592.

We find that counsel's and the petitioner's claims on appeal lack credibility, as they contradict previous assertions and rely on unexplained and implausible circumstances. The evidence submitted on appeal does not support these new claims without a number of tenuous assumptions. For instance, counsel states that "a list of members supporting [the beneficiary]" accompanies the appeal. The list is essentially a series of signatures beneath the heading "We support [the beneficiary]." Counsel implies that this document refers at least in part to material "support," such as "food, gas, and other essential goods," but this is not a necessary or self-evident interpretation of the phrase "We support [the beneficiary]." The individuals who signed the document may well have meant simply that they "support" the beneficiary's efforts to attain immigration benefits. The petitioner, on whom the burden of proof rests, has not substantiated counsel's interpretation.

Even if we were to assume that counsel's version of events was accurate, that narrative assumes that the petitioner was unable to pay the beneficiary's salary after July 2005, and that the only way the beneficiary could continue to work for the petitioner was if "the Church members helped the Petitioner by paying Beneficiary[']s salary." If the petitioner needed "help" to meet its payroll, then the petitioner was not able to pay the beneficiary's proffered salary as required by 8 C.F.R. § 204.5(g)(2). But the explanation that the petitioning church turned to its congregation for "help" is not particularly persuasive, given that the church's own finances presumably derive, in large part, from donations from the congregation.

For the reasons discussed above, we find that the petitioner's arguments on appeal are not persuasive or credible. Those claims either contradict previous claims and documentation, or else rely on unwarranted and unsubstantiated assumptions. The newly-claimed version of events appears to be a reaction to the denial rather than an objective, factual narrative.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.